LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 18 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 665

LOUISE TUCKER BENNETT, JAMES ROBERTSON, JULIAN MAY JACKSON, suing by his mother and next friend Corine Jones and SAMUEL R. PERRYMAN, each individually and on behalf of all others similarly situated,

Appellants,

—v.—

D. S. COTTINGHAM, GEORGE E. DAILEY, GLENN TIBBS, LOUIE BOGGS, LLOYD ROWE, ALICE PRATT, CLIFFORD WARD, FREEMAN MURPHY, Justices of the Peace in Bibb County, Alabama; HAROLD DAILEY, Sheriff of Bibb County, Alabama; McDONALD GALLION, Attorney General of the State of Alabama and GEORGE WHITE, County Solicitor of Bibb County, Alabama,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

JURISDICTIONAL STATEMENT

JACK GREENBERG
MICHAEL MELTSNER
MELVYN ZARR
10 Columbus Circle
New York, New York 10019

OSCAR W. ADAMS, JR.
HARVEY M. BURG
1630 Fourth Avenue North
Birmingham, Alabama 35203

ANTHONY G. AMSTERDAM
3400 Chestnut Street
Philadelphia, Penna. 19104

Attorneys for Appellants

INDEX

	PAGE
Opinion Below	1
Jurisdiction	2
Question Presented	2
Statement of the Case	2
The Question Presented Is Substantial	
Whether a State Practice Which Requires Law Enforcement Officers to Meet a Quota of Arrests in Order to Receive Compensation Can Be Squared With the Fourteenth Amendment Is a Substantial Question Requiring Resolution by This Court	8
Conclusion	12
Appendix	
Opinion Below	1a
Judgment Below	10a

Table of Cases

Harper v. Virginia State Board of Elections, 383 U. S. 663 (1966)	2
Hill v. United States, 328 F. 2d 988 (5th Cir. 1964)	10
Hulett v. Julian, 250 F. Supp. 208 (M. D. Ala. 1966)	7
Sibron v. New York, 392 U. S. 40 (1968)	9

PAGE

Terry v. Ohio, 392 U. S. 1 (1968) 9
Tumey v. Ohio, 273 U. S. 510 (1927) 6, 7, 9

Williamson v. United States, 311 F. 2d 441 (5th Cir. 1963) 10

Statutes:

28 U. S. C. §1253 2
28 U. S. C. §1343 ..... 2, 6
28 U. S. C. §2201 ..... 2, 6
28 U. S. C. §2281 ..... 2, 6
42 U. S. C. §1983 ..... 2, 6
Code of Ala. Tit. 11, §§96, 97 7
Code of Ala. Tit. 11, §100 4

Other Authorities:

The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report, "The Police" (1967) 10, 11

United States Commission on Civil Rights, "Political Participation" (1968) 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. .....

LOUISE TUCKER BENNETT, JAMES ROBERTSON, JULIAN MAY JACKSON, suing by his mother and next friend Corine Jones and SAMUEL R. PERRYMAN, each individually and on behalf of all others similarly situated,

Appellants,

—v.—

D. S. COTTINGHAM, GEORGE E. DAILEY, GLENN TIBBS, LOUIE BOGGS, LLOYD ROWE, ALICE PRATT, CLIFFORD WARD, FREEMAN MURPHY, Justices of the Peace in Bibb County, Alabama; HAROLD DAILEY, Sheriff of Bibb County, Alabama; MCDONALD GALLION, Attorney General of the State of Alabama and GEORGE WHITE, County Solicitor of Bibb County, Alabama,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

JURISDICTIONAL STATEMENT

Opinion Below

The opinion of the court below is as yet unreported and is set forth in the Appendix, p. 1a, *infra*.

Jurisdiction

This is a civil action brought pursuant to 28 U. S. C. §§1343 and 2201 and 42 U. S. C. §1983 for declaratory and injunctive relief against the operation of statutes of the State of Alabama which provide a pecuniary inducement to the performance of official acts of justices of the peace and sheriffs in Alabama.

The judgment of the United States District Court for the Northern District of Alabama was entered June 27, 1968 (R. 56; App., pp. 10a-11a, *infra*).[1] Timely notice of appeal to this Court was filed August 21, 1968 (R. 58).

Jurisdiction of this Court is invoked pursuant to 28 U. S. C. §1253 to review the judgment of the district court of three judges necessarily convened pursuant to 28 U. S. C. §2281. See, e.g., *Harper* v. *Virginia State Board of Elections*, 383 U. S. 663 (1966).

Question Presented

Does a state practice of paying law enforcement officers only if they make a minimum number of arrests offend the Fourteenth Amendment to the Constitution of the United States?

Statement of the Case

Bibb County, Alabama is a rural county through which pass three major highways (R. 52; Tr. 125; App., p. 4a, *infra*). The Mayor of Centreville, the county seat of Bibb

[1] "R." refers to the record of pleadings and orders, which is paginated independently of the transcript of the trial below, refered to herein as "Tr."

County, testified concerning the conduct of the Sheriff's office, especially with respect to enforcement of highway laws (Tr. 22-23):

> We had received complaints from all over the state, people everywhere, that they could not get through Bibb County. We had received complaints from Negroes in Jefferson County . . . I would say a large percentage of the Negroes of Jefferson County are made up of Negroes who formerly lived in the Black Belt and . . . have migrated to the larger cities.
>
> Usually on Friday afternoon, a lot of these Negroes will start back to visit some of their folks who live in the Black Belt, and there are always a large number of cars on Friday and Saturday, and they would start back to Birmingham on Sunday. It was hard for them to get through Bibb County, the Negro population, and it was hard for white people, especially the out of county people. The records will show a large percentage of the people that were caught in this speed trap were out of county folks.

Sheriff Harold Dailey of Bibb County maintains and must pay a staff of three full-time deputies and one part-time deputy, a bookkeeper and a jailer (R. 50; Tr. 58-61, 65-66; App., p. 3a, *infra*). The expenses of his office average about $3,000 per month (Tr. 38-49; Plaintiffs' Exhibits 3-6).[2] He receives a salary of $50 per month for services

---

[2] In 1967, the office paid an average of approximately $1,250 per month to the Sheriff's employees and expended an average of approximately $1,750 per month for maintenance of patrol cars and the jail and for miscellaneous expenses.

Salary items paid to two of the Sheriff's deputies by the County Board of Revenue are excluded from these figures. See notes 5, 6, *infra*. The salaries account for less than half of the acknowledged compensation of the deputies, do not flow through the Sheriff's office, and are not material to the financial operations of the office.

rendered respecting elections (R. 50; Tr. 72-73; App., p. 3a, *infra*). He also receives about $200 per month from the State for maintaining prisoners in the county jail (Plaintiffs' Exhibit 21). The only remaining acknowledged source of income of the office is the fee he receives for each arrest (R. 50; Tr. 40-41, 59, 61; App., p. 3a, *infra*). See Code of Ala. Tit. 11, §100.[3] Accordingly, in order to meet the expenses of his office—and to make a living wage for himself—he and his deputies must make a sufficient number of arrests. This they do.

The Sheriff and his deputies make enough arrests to bring in an average of approximately $3,000 per month in fees.[4] The Sheriff may elect to charge an offense in either the Justice of the Peace Court or the Circuit Court (Tr. 139-40). In the Justice of the Peace Court, where the Sheriff prosecutes the offense, the Sheriff receives his fee only upon conviction (R. 50; Tr. 62; App., p. 3a, *infra*). In the Circuit Court, only the Sheriff's mileage fee (see note 3, *supra*) is lost if there is no conviction (R. 50; Tr. 62; App., p. 3a). In 1967, income from the Justice of the Peace Court averaged approximately $1,650 per month (Plaintiffs' Exhibit 20); income from the Circuit Court averaged approximately $1,300 per month (Plaintiffs' Exhibits 18, 22). The Sheriff pays his chief deputy $2.00 per arrest for each arrest in excess of an office threshold of 100 arrests per month (R. 51; Tr. 50, 127; App., p. 3a,

[3] The components of the fee are: $5.00 for the statutory fee for arrest prescribed by Code of Ala. Tit. 11, §100; $2.00 for the statutory bond fee prescribed by §100; $.75 as a witness fee; and a mileage fee. See Tr. 54. The Sheriff could give no explanation for the fact that the fee in a great number of cases amounted to $14.90 (Tr. 56; Plaintiffs' Exhibit 20).

[4] In 1967, the average fee amounted to $14.22 per arrest (Plaintiffs' Exhibit 20; Tr. 86-89).

infra).[5] Another deputy is paid $1.00 per arrest for each arrest in excess of this office threshold (R. 51; Tr. 59; App., p. 3a, *infra*).[6] Justice of the Peace George E. Dailey, uncle of the Sheriff, and other justices receive $3.00 per case if they convict, but nothing if they acquit (R. 51; App., pp. 3a-4a, *infra*).

In response to complaints of a speed trap in Bibb County, the Alabama Motorists Association commissioned an independent audit of the fees paid to the Sheriff (Tr. 35-36). This audit revealed a dramatic increase in recent years in the Sheriff's earnings. See Plaintiffs' Exhibit 20; Tr. 87-89. In the Justice of the Peace Court alone, the Sheriff's income rose from $1,137.00 (137 arrests) in 1962 to $19,680.00 (1384 arrests) in 1967.[7]

---

[5] The chief deputy receives a salary of $355 per month from the County Board of Revenue. This sum does not flow through the Sheriff's office, and it is not included in the statement of expenses of the office—about $3,000 per month—in text, *supra*. The chief deputy's incentive pay from the Sheriff (which is included in the statement of office expenses) exceeds the salary paid by the Board of Revenue (Tr. 136-37).

[6] This deputy receives a salary of $200 per month from the County Board of Revenue (Tr. 59). This sum does not flow through the Sheriff's office, and it is not included in the statement of expenses of the office—about $3,000 per month—in text, *supra*. This deputy's incentive pay from the Sheriff (which is included in the statement of office expenses) exceeds the salary paid by the Board of Revenue (Plaintiff's Exhibit 29).

[7] The increasing lucrativeness of the Sheriff's practice may be tabulated as follows:

Year	Number of Arrests	Sheriff's Fees	Average Sheriff's Fee
1962	137	$ 1,137	$ 8.30
1963	276	3,173	11.50
1964	404	4,767	11.80
1965	585	6,905	11.80
1966	1018	13,625	13.38
1967	1384	19,680	14.22

On November 30, 1967, appellants Bennett, Jackson and Robertson, Negro licensed motorists residing outside Bibb County, filed an action in the United States District Court for the Northern District of Alabama, pursuant to 28 U. S. C. §§1343 and 2201 and 42 U. S. C. §1983, seeking injunctive and declaratory relief against the fee practices of the Sheriff and the Justices of the Peace of Bibb County and the state statutes supporting those practices (R. 1-9, 49-50; App., p. 2a, *infra*).

Appellants Bennett and Jackson had previously been arrested, tried and convicted for highway violations in Bibb County. They had paid the fees for their arrests and convictions to the Sheriff and the Justices of the Peace respectively (R. 50; App., p. 2a). Appellant Robertson had been arrested for a highway violation but had not yet been tried by Justice of the Peace Dailey (R. 50; App., p. 2a).

Appellants claimed that both the Sheriff and the Justices of the Peace had a "direct, personal, substantial pecuniary interest" in arresting, prosecuting and convicting them, contrary to the Fourteenth Amendment to the Constitution of the United States (*Tumey* v. *Ohio,* 273 U. S. 510, 523 (1927)) (R. 3).

On December 5, 1967, District Judge H. H. Grooms issued a temporary restraining order, with notice, restraining Robertson's prosecution before Justice Dailey (R. 16-21).

On December 12, 1967, the Chief Judge of the Court of Appeals for the Fifth Circuit designated a three-judge district court pursuant to 28 U. S. C. §2281 to hear and determine the action (R. 23-24).

On December 18, 1967, Sheriff Dailey filed an answer admitting that an actual controversy existed between him-

self and the appellants, but denying that his pecuniary interest in arresting and prosecuting the appellants violated any of their federal constitutional rights (R. 35).[8]

Subsequent to the issuance of Judge Grooms' temporary restraining order, the number of highway violations instituted by the Sheriff in the Circuit Court increased, while the number instituted in the Justice of the Peace Court declined (Plaintiffs' Exhibit 18). On January 25, 1968, appellants filed, with leave of the Court, an amendment to the complaint alleging this shift in practice and praying that the Court declare the Sheriff's fee arrangement unconstitutional, irrespective of whether fees were earned in the Circuit Court or the Justice of the Peace Court (R. 39-41). Sheriff Dailey, in an amended answer, admitted that highway violations were being made returnable to the Circuit Court (R. 46).

After trial on the merits, on June 27, 1968, the district court held that Code of Ala. Tit. 11, §§96 and 97, which provide for taxation of Justices' fees as costs upon conviction, were unconstitutional in their application to fines and costs collected for highway violations by Justices of the Peace (R. 56; App., p. 10a, *infra*). The Court relied upon *Tumey* v. *Ohio, supra,*[9] and *Hulett* v. *Julian,* 250 F. Supp.

---

[8] The answer stated, *inter alia* (R. 35):

> Defendant . . . admits there is an actual controversy between the plaintiffs and the defendants, sheriff and Justices of the Peace; however, the defendant Harold Dailey denies that he makes the arrests solely for the fees involved.

[9] *Tumey* held that "it certainly violates the Fourteenth Amendment and deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case" (273 U. S. at 523).

208 (M. D. Ala. 1966) (three-judge court) (R. 52-54; App., pp. 5a-7a, *infra*).

But the court held that the Sheriff's pecuniary interest in arresting and prosecuting did not offend the Fourteenth Amendment. The court expressly "decline[d] to extend *Tumey* to include the Sheriff and his deputies" (R. 55; App., p. 8a, *infra*). Accordingly, the court dismissed Sheriff Dailey as a party defendant (R. 57; App., p. 11a, *infra*).

From so much of the judgment as dismissed the action against Sheriff Dailey, appellants took the instant appeal.[10]

The Question Presented Is Substantial

Whether a State Practice Which Requires Law Enforcement Officers to Meet a Quota of Arrests in Order to Receive Compensation Can Be Squared With the Fourteenth Amendment Is a Substantial Question Requiring Resolution by This Court.

The record in this case demonstrates that the Sheriff of Bibb County cannot meet the expenses of his office—or even make a living—unless he and his deputies meet a minimum quota of arrests. This practice of making a police officer's livelihood depend on an arrest quota cannot be squared with due process of law.

No extended argument should be needed to demonstrate that an arrest is a significant deprivation of liberty which cannot constitutionally be made arbitrarily, discriminatorily or pursuant to an official's personal interest. The revulsion to the *lettre de cachet* which the Framers of the Con-

[10] Appellants' timely notice of appeal was filed August 21, 1968 (R. 58).

stitution expressed in the Fourth Amendment suffices to establish that proposition. And this Court has recently recognized the gravity, and consequent claim to constitutional limitation, of police practices whose intrusions upon the liberty of the citizen were substantially less severe than those of an arrest. *Terry* v. *Ohio,* 392 U. S. 1 (1968); *Sibron* v. *New York,* 392 U. S. 40 (1968).

When an officer makes an arrest without a warrant, the Fourth and Fourteenth Amendments require that he make a judgment of probable cause. Whatever else this judgment may imply, surely it supposes at the least an impartial assessment of the facts and an informed application to them of the proper legal standard. It is in the light of these elemental principles that petitioner's constitutional submission in the present case, which the court below rejected, takes on its clear import and importance. We urge, simply, that in making the arrest decision, an officer is constitutionally required "to hold the balance nice, clear and true" between the State and the citizen (*Tumey* v. *Ohio, supra,* 273 U. S. at 532), free, at least, from the gross biasing force of a direct financial inducement to arrest.

Where, as here, the State maintains a practice which generates in law enforcement officers such a direct, personal and substantial pecuniary inducement to arrest citizens, "[t]he scales of justice are thereby weighted" against citizens' liberty (R. 53; App., p. 6a, *infra*). The inducement here is not marginal; the Sheriff must either maintain a high volume of arrests or go unremunerated. And when the Sheriff elects to proceed in the Justice of the Peace Court, he must do far more than arrest to secure his fees. He must prosecute, and usually he must testify, in order to secure a conviction.

The court below held that sheriffs and their deputies were to be excluded from the operation of the *Tumey* doctrine that a citizen's liberty may not be conditioned upon the discretion of an official who has a direct, personal and substantial pecuniary interest in depriving him of his liberty (R. 55; App., p. 8a, *infra*). The court derived this conclusion from the following quoted language in *Tumey*, 273 U. S. at 535 (R. 55; App., p. 8a, *infra*):

> It is further said with truth that the legislature of a state may and often ought to stimulate prosecutions for crime by offering to those who shall initiate and carry on such prosecutions rewards for thus acting in the interest of the state and the people. The legislature may offer rewards or a percentage of the recovery to informers. United States v. Murphy & Morgan, 16 Pet. 203. It may authorize the employment of detectives.

Other courts have not so lightly assumed that evolving notions of due process are entirely without relevance to the bounty system of compensating even informers. Compare *Williamson* v. *United States*, 311 F. 2d 441 (5th Cir. 1963), with *Hill* v. *United States*, 328 F. 2d 988 (5th Cir. 1964).

But, however this may be, we submit the Court should decisively reject the notion that a State or its subdivision may condition the remuneration of policemen and prosecutors upon the fulfillment of a quota of arrests and prosecutions, as if it were paying rewards to informers.

The analogy simply does not comport with reality. As the President's Commission on Law Enforcement and the

Administration of Justice said in its Task Force Report, "The Police," p. 189 (1967):

> Police work is far too complicated and delicate a job to judge an officer's work or qualifications for promotion on the number of arrests he has made. Furthermore, arrest quotas, if they exist as either explicit requirements or implied expectations, can lead to improper activity by policemen. Patrolling officers have the complex and difficult responsibility of exercising their discretion based on the circumstances of the particular case. No part of this calculation should consist of the number of arrests the officer has made in comparison to a preestablished quota or expectation set by the department.

Here, not simply the officer's advancement but his very livelihood depends on his meeting his quota of arrests.

Moreover, this pecuniary inducement to arrest and prosecute creates an evident potential for "improper activity" endangering the right of a person not to be denied equal protection of the laws. There was testimony below that Negroes and out of county motorists were made to bear the major financial burden of the Sheriff's operation (see Tr. 22-23). This is hardly surprising, since an elected sheriff would obviously prefer to impose the major financial burden of his office on nonvoting motorists.[11]

---

[11] The voting age population in Bibb County is approximately 25% Negro. The percentage of Negroes registered to vote is just under 50%, while the percentage of whites registered to vote is over 100%. See United States Commission on Civil Rights, "Political Participation," pp. 224-25 (1968).

No police officer, no matter how high-minded or impractical, could be expected to ignore the financial pressures imposed on him by the State and County. But even if such an officer could be found, "the requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest self-sacrifice could carry it on without danger of injustice" (*Tumey, supra,* 273 U. S. at 532).

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,

JACK GREENBERG
MICHAEL MELTSNER
MELVYN ZARR
10 Columbus Circle
New York, New York 10019

OSCAR W. ADAMS, JR.
HARVEY M. BURG
1630 Fourth Avenue North
Birmingham, Alabama 35203

ANTHONY G. AMSTERDAM
3400 Chestnut Street
Philadelphia, Penna. 19104

Attorneys for Appellants

APPENDIX

Opinion Below

In the

UNITED STATES DISTRICT COURT

For the Northern District of Alabama

Western Division

Civil Action No. 67-640

Mrs. Louise Tyrone Bennett, Mr. James Robertson, Mr. Julian May Jackson, suing by his mother and next friend, Mrs. Celine [illegible] individually and on behalf of all others similarly situated,

Plaintiffs,

—vs.—

The Honorable [illegible] Carmichael, George E. Dailey, Glen Tubb, [illegible] Jones, Lloyd Rowe, Alice Pratt, Clarence Wade, Thomas Murphy, Justices of the Peace in Bibb County, Alabama; The Honorable Harold Dailey, Sheriff of Bibb County, Alabama; The Honorable MacDuff [illegible], Attorney General of the State of Alabama; The Honorable George White, County Solicitor of Bibb County, Alabama; *et al.*,

Defendants.